

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

OCT 16 2018

Clerk, U S District Court
District Of Montana
Billings

ROBERT A. EATON,

Plaintiff,

vs.

MONTANA SILVERSMITHS,

Defendant.

CV 18-65-BLG-SPW

ORDER ADOPTING
FINDINGS AND
RECOMMENDATIONS

Plaintiff Robert Eaton, appearing pro se, has moved for Application of Entry of Default. (Doc. 8). Pending before the Court are United States Magistrate Judge Timothy Cavan's findings and recommendations on Eaton's Application. (Doc. 9). Judge Cavan recommends this Court deny Eaton's Application for failing to demonstrate that he properly served Montana Silversmiths. (Doc. 9 at 3). Eaton filed timely objections to the findings and recommendations, entitling him to de novo review. 28 U.S.C. §636(b)(1); Fed. R. Civ. P. 72(b)(3).

In his objection, Eaton asserts that during the Montana Human Rights Bureau investigation, the Equal Employment Opportunity Commission advised him to direct his correspondence to Montana Silversmiths through its attorney, Jessica Fehr, at Moulton Bellingham, Longo & Mather. (Doc. 10). When he contacted Moulton Bellingham, attorney Joseph Soveidi advised him that Ms. Fehr had become a judge and that Mr. Soveidi had taken over her files. (*Id.*). Mr.

Soveidi acknowledged that he was counsel for Montana Silversmiths. (*Id.*).


Accordingly, Eaton asserts that he properly served Montana Silversmiths and appropriately followed Fed. R. Civ. P. 4(h), as evidenced by his May 25, 2018 Return of Service indicating that the summons and amended complaint was served on Joseph Soveidi, attorney at Moulton, Bellingham, Longo & Mather. (Doc. 7).

Unfortunately for Eaton, however, simply because Joseph Soveidi is Montana Silversmiths' attorney to whom correspondence should be directed, does not mean he is the "officer, [] managing or general agent, or . . . agent authorized by appointment or law to receive service of process." *See* Fed. R. Civ. P. 4(h). As Judge Cavan noted, Eaton failed to set forth the details of service authorizing Moulton Bellingham Longo & Mather to receive service on Montana Silversmiths' behalf. Without a showing that Moulton Bellingham Long Mather was a legally correct recipient of service under 4(h), this Court may not find proper service, and default cannot be entered.

IT IS ORDERED the proposed findings and recommendations entered by United States Magistrate Judge Cavan (Doc. 9) are ADOPTED IN FULL.

IT IS FURTHER ORDERED Eaton's Application (Doc. 8) is DENIED.

DATED this 16th day of October, 2018.


SUSAN P. WATTERS
United States District Judge